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10/523,954	08/18/2005	Michele Cassol	U 015593-6	9416
140	7590	05/03/2010	EXAMINER	
LADAS & PARRY LLP 26 WEST 61ST STREET NEW YORK, NY 10023			VOLZ, ELIZABETH J	
			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

nyuspatactions@ladas.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/523,954	<b>Applicant(s)</b> CASSOL ET AL.	
	<b>Examiner</b> ELIZABETH VOLZ	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 29-53 and 56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-53 and 56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 56 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Regarding claim 56, the phrase "in particular" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 29-45, 51-53 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thorp (U.S. Patent No. 3,701,454) in view of Jacke (U.S. Patent No. 3,435,977).
6. Regarding Claim 29, Thorp discloses a fuel can 10 (Figure 1) with a can body 12 (Figure 1) containing a fuel filling 32 (Figure 2) and a cover lid 16 (Figure 1) which is

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formed by a sealing foil and which by sealing onto a flange like rim 22 (Figure 2) of the can body is permanently connected to the can body (Column 2, Lines 54-57), wherein that the cover lid is designed in such a manner that at least one opening (Figure 3) in the cover lid is producible by a complete or partial severing or detaching of one or more lid portion elements along one of several material bonded predetermined breaking locations (Figure 3). Thorp does not disclose a sealing layer comprising at least two metal foils interconnected by a synthetic material layer located between same, and in particular, whereby the metal foils are aluminum foils, which are interconnected with each other by a polyethylene layer. However, Jacke teaches two aluminum foils 30/31 (Figure 3) interconnected by a polyethylene layer 32 (Figure 3; Column 3, Lines 5-8). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Thorp to include two aluminum foils interconnected by a polyethylene layer, as taught by Jacke, in order to strengthen the cover lid while reducing metal required (Column 1, Lines 38-43).

7. Regarding Claims 30 and 31, Thorp teaches all the limitations substantially as claimed except for a first metal foil weakened along a predetermined breaking location whereas a second metal foil is continuous in the area of the predetermined breaking location and the second metal foil faces the can body. However, Jacke teaches a first metal foil 31 (Figure 3) weakened 42 (Figure 3) along a predetermined breaking location whereas a second metal foil 30 (Figure 3) is continuous in the area of the predetermined breaking location and the second metal foil faces the can body.

Therefore, it would have been obvious for one of ordinary skill in the art at the time the

invention was made to modify Thorp to include a first metal foil weakened along a predetermined breaking location whereas a second metal foil is continuous in the area of the predetermined breaking location and the second metal foil faces the can body, as taught by Jacke, in order to assist in the removal of the tab.

8. Regarding Claim 32, Thorp discloses a severable lid portion element which remains undetachably connected at the cover lid (Figure 5).

9. Regarding Claim 33, Thorp discloses part of the severable lid portion elements which are designed as peel-off elements 58 (Figure 5), and in particular, in that they are formed by a peel-off foil element extending across the entire cover lid (Figure 5).

10. Regarding Claim 34, Thorp discloses part of a severable lid portion element is designed as a sub-area 40 (Figure 1) which is detachable from the cover lid.

11. Regarding Claim 35, Thorp discloses that by severing lid portion elements, various openings are selectively producible in the cover lid (Figure 5). Examiner believes “producible” means “capable of being produced”.

12. Regarding Claim 36, Thorp discloses a pulling ring 60 (Figure 5) which projects over an outer border of the fuel can in order to facilitate a severing of a lid portion.

13. Regarding Claim 37, it would have been an obvious matter of design choice to modify Thorp to have openings with an opening pattern with at least two axes of symmetry, since applicant has not disclosed that having symmetric openings solves any stated problem or is for any particular purpose and it appears that the device would perform equally well with either designs.

Furthermore, absent a teaching as to criticality of the openings having at least two axes of symmetry, this particular arrangement is deemed to have been known by those skilled in the art since the instant specification and evidence of record fail to attribute any significance (novel or unexpected results) to a particular arrangement. In re Kuhle, 526 F.2d 553,555,188 USPQ 7, 9 (CCPA 1975).

14. Regarding Claim 38, Thorp discloses a center opening in the cover lid which is substantially the same shape as the surface of a fuel filling in the can body (Figure 5).

15. Regarding Claim 39, Thorp discloses a substantially circular or quadratic center opening is producible, and in particular, in that it comprises an area which corresponds to at least 15% of the surface area (Figure 5).

16. Regarding Claim 40, Thorp discloses one or several strip shaped opening pattern elements are producible and extending up to the edge of the cover lid (Figure 5).

17. Regarding Claim 41, Thorp discloses strip shaped opening pattern elements pass smoothly into the central opening and form pear-shaped opening (Figure 5).

18. Regarding Claim 42, Thorp discloses two strip-shaped opening pattern elements which are producible and located opposite each other (Figure 5).

19. Regarding Claim 43, Thorp discloses small circular openings which are producible in the cover lid in addition to the central opening and which surround the center opening (Figure 2).

20. Regarding Claim 44, Thorp discloses that severing the lid portion elements causes an irreversible elimination of the material bond along the predetermined breaking locations 59 (Figure 5).

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21. Regarding Claim 45, Thorp discloses a can body 12 (Figure 1) which is a deep drawn cup of aluminum (Column 2, Lines 33-34).

22. Regarding Claim 51, Thorp discloses a fuel can 10 (Figure 1) with a can body 12 (Figure 1) containing a fuel filling 32 (Figure 2) and cover lid 16 (Figure 1) which is formed by a sealing foil which by sealing onto a flange like rim 22 (Figure 2) of the can body is permanently connected to the can body (Column 2, Lines 54-57), wherein the cover lid is designed in such a manner that at least one opening (Figure 3) in the cover lid is producible by a complete or partial severing or detaching of one or more lid portion elements along one or several material bonded predetermined breaking locations. Thorp does not disclose at least two aluminum foils, which are interconnected with each other by a polyethylene layer wherein a first one of the two metal foils is weakened or interrupted along the predetermined breaking location whereas the second metal foil is continuous in the area of the predetermined breaking location whereas the second metal foil is continuous in the area of the predetermined breaking location and faces the can body and wherein after the complete severing of the predetermined breaking locations, the severable lid portion elements remain undetachably connected at the cover lid. However, Jacke teaches at least two aluminum foils 30/31 (Figure 3), which are interconnected with each other by a polyethylene layer 32 (Figure 3; Column 3, Lines 5-8) wherein a first one of the two metal foils is weakened or interrupted 42 (Figure 3) along the predetermined breaking location whereas the second metal foil 30 (Figure 3) is continuous in the area of the predetermined breaking location whereas the second metal foil is continuous in the area

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of the predetermined breaking location and faces the can body (Figure 3) and wherein after the complete severing of the predetermined breaking locations, the severable lid portion elements remain undetachably connected at the cover lid (Figure 3). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Thorp to include two aluminum foils interconnected by a polyethylene layer where the first metal foil is weakened along a predetermined breaking location whereas the second metal foil is continuous in the area of the predetermined breaking location and the second metal foil faces the can body, as taught by Jacke, in order to strengthen the cover lid while still allowing the tab to be easily removed.

23. Regarding Claim 52, Thorp discloses a fuel can 10 (Figure 1) with a can body 12 (Figure 1) containing a fuel filling 32 (Figure 2) and cover lid 16 (Figure 1) which is formed by a sealing foil which by sealing onto a flange like rim 22 (Figure 2) of the can body is permanently connected to the can body (Column 2, Lines 54-57), wherein the cover lid is designed in such a manner that at least one opening (Figure 3) in the cover lid is producible by a complete or partial severing or detaching of one or more lid portion elements along one or several material bonded predetermined breaking locations. Thorp does not disclose at least two aluminum foils, which are interconnected with each other by a polyethylene layer wherein a first one of the two metal foils is weakened or interrupted along the predetermined breaking location whereas the second metal foil is continuous in the area of the predetermined breaking location whereas the second metal foil is continuous in the area of the predetermined



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breaking location and faces the can body and wherein the cover lid is designed in such a manner that by severing one or several lid portion elements, various openings are selectively producible in the cover lid. However, Jacke teaches at least two aluminum foils 30/31 (Figure 3), which are interconnected with each other by a polyethylene layer 32 (Figure 3; Column 3 Lines 5-8) wherein a first one of the two metal foils is weakened or interrupted 42 (Figure 3) along the predetermined breaking location whereas the second metal foil 30 (Figure 1) is continuous in the area of the predetermined breaking location whereas the second metal foil is continuous in the area of the predetermined breaking location and faces the can body (Figure 3) and wherein the cover lid is designed in such a manner that by severing one or several lid portion elements, various openings are selectively producible in the cover lid (Figure 14). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Thorp to include two aluminum foils interconnected by a polyethylene layer wherein the first metal foil is weakened along a predetermined breaking location whereas the second metal foil is continuous in the area of the predetermined breaking location and the second metal foil faces the can body, as taught by Jacke, in order to strengthen the cover lid while still allowing the tab to be easily removed.

24. Regarding Claim 53, Thorp discloses a fuel can 10 (Figure 1) with a can body 12 (Figure 1) containing a fuel filling 32 (Figure 2) and cover lid 16 (Figure 1) which is formed by a sealing foil which by sealing onto a flange like rim 22 (Figure 2) of the can body is permanently connected to the can body (Column 2, Lines 54-57), wherein the cover lid is designed in such a manner that at least one opening (Figure 3) in the cover

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lid is producible by a complete or partial severing or detaching of one or more lid portion elements along one or several material bonded predetermined breaking locations. Thorp does not disclose at least two aluminum foils, which are interconnected with each other by a polyethylene layer wherein a first one of the two metal foils is weakened or interrupted along the predetermined breaking location whereas the second metal foil is continuous in the area of the predetermined breaking location whereas the second metal foil is continuous in the area of the predetermined breaking location and faces the can body and wherein the cover lid is designed in such a manner that by the severing of the lid portion elements a center opening, which has substantially the same shape as the surface of a fuel filling in the can body at a medium level of fill and is concentrically arranged relative to same, and one or several strip-shaped opening pattern elements, which are extending radially outwards from same, in particular up to the edge of the cover lid, and smoothly pass into the central opening, are producible in the cover lid. However, Jacke teaches at least two aluminum foils 30/31 (Figure 3), which are interconnected with each other by a polyethylene layer 32 (Figure 3; Column 3, Lines 5-8) wherein a first one of the two metal foils is weakened or interrupted 42 (Figure 3) along the predetermined breaking location whereas the second metal foil 30 (Figure 3) is continuous in the area of the predetermined breaking location whereas the second metal foil is continuous in the area of the predetermined breaking location and faces the can body (Figure 3) and wherein the cover lid is designed in such a manner that by the severing of the lid portion elements a center opening (Figure 5), which has substantially the same shape as the surface of a fuel filling in the can body at

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a medium level of fill and is concentrically arranged relative to same, and one or several strip-shaped opening pattern elements, which are extending radially outwards from same, in particular up to the edge of the cover lid, and smoothly pass into the central opening, are producible in the cover lid (Figure 14). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Thorp to include two aluminum foils interconnected by a polyethylene layer wherein the first metal foil is weakened along a predetermined breaking location whereas the second metal foil is continuous in the area of the predetermined breaking location and the second metal foil faces the can body, as taught by Jacke, in order to strengthen the cover lid while still allowing the tab to be easily removed.

25. Regarding Claim 56, Thorp discloses a use fuel can as a thermal, heat or light source (Figure 1; intended use).

26. Claims 46-48 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thorp (U.S. Patent No. 3,701,454) in view of Jacke (U.S. Patent No. 3,435,977) and Mansnerus et al. (U.S. Patent No. 3,811,817).

27. Regarding Claims 46-48 and 50, Thorp and Jacke teach all the limitations substantially as claimed except for a fuel filling consisting of methanol or polyethylene glycols and a wick of a cotton or fleece like material. However, Mansnerus et al. teaches a fuel filling consisting of methanol (Column 3, Line 8) or polyethylene glycols (Column 4, Lines 1-2) and a wick 14 (Figure 1) of a cotton or fleece like material. Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Thorp and Jacke to include a fuel filling consisting of

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methanol or polyethylene glycols and a wick of a cotton or fleece like material, as taught by Mansnerus et al., in order to provide the appropriate fuel for the container.

28. Claims 48 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thorp (U.S. Patent No. 3,701,454) in view of Jacke (U.S. Patent No. 3,435,977) and Hoffmann (U.S. Patent No. 6,592,363).

29. Regarding Claims 48 and 49, Thorp and Jacke teach all the limitations substantially as claimed except for a wick of a cotton or fleece like material and a diethylene glycol fuel. However, Hoffmann teaches a wick 50 (Figure 1) of a cotton or fleece like material and a diethylene glycol fuel (Column 4, Lines 11-12). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Thorp and Jacke to include a wick of a cotton or fleece like material and a diethylene glycol fuel, as taught by Hoffmann, in order to provide the appropriate fuel for the container.

30. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments

made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02.

The "disclosure" includes the claims, the specification and the drawings.

***Response to Arguments***

31. Applicant's arguments filed 3/29/2010 have been fully considered but they are not persuasive.

32. Applicant argues that Thorp allows the contents to be dispensed from the container whereas the applicant's invention requires the contents to remain within. However, when Thorp is not pouring the contents, they are within the container and therefore meet the claim requirements. Referring to Levinson et al. (U.S. Patent No. 5,193,521), it can be seen that the contents of the container are not required to be poured out when the liquid fuel is being burned. The combination of Thorp and Mansnerus et al. teach the container and the fuel within the container. Therefore, as clearly shown in Levinson et al., it is well known that the contents can remain within the container when being burned.

33. Applicant argues that Thorp does not have the cover lid permanently attached to the cover body. However, in as much as Applicant discloses in the specification, gluing and welding, Thorp discloses crimping the cover lid to the body. Both the applicant's invention and Thorp can be considered permanently attached since the cover lid and body remain attached to one another. Gluing, welding and crimping have the possibility of being undone (removed so attached components are no longer attached) and therefore can be considered the same.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH VOLZ whose telephone number is (571) 270-5430. The examiner can normally be reached on Monday-Thursday, 8am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. V./  
Examiner, Art Unit 3781

/Anthony Stashick/  
Supervisory Patent Examiner, Art  
Unit 3781